

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TRAVIS J. KINNEY)	
)	Civil Action No. 1:15-cv-122 (Keeley)
Plaintiff,)	
)	Electronically filed: July 24, 2015
v.)	
)	ELECTRONICALLY FILED
FIBREK RECYCLING, U.S. INC.)	
)	
Defendant.)	

NOTICE OF REMOVAL

To: The Honorable Judges of the United States District Court for the Northern District of West Virginia

Defendant, Fibrek Recycling U.S. Inc., by and through its undersigned counsel, and in accordance with the applicable Federal Rules of Civil Procedure, Local Rules of the United States District Court for the Northern District of West Virginia, and Title 28 of the United States Code §§ 1331, 1441 and 1446 hereby files this Notice of Removal and removes the action entitled “Travis J. Kinney v. Fibrek Recycling, U.S. Inc.”, Case No. 15-C-135 in the Circuit Court of Marion County, West Virginia, to the United States District Court for the Northern District of West Virginia. Removal of this action is based upon the following:

BACKGROUND

1. On June 17, 2015, Plaintiff, Travis J. Kinney (“Plaintiff”) commenced a civil action against Resolute FP US Inc. (“Resolute FP”) by filing a Complaint in the Circuit Court of Marion County, West Virginia. Resolute FP was served with a copy of the Summons and Complaint through service on the Secretary of State on June 24, 2015. A true and correct copy of the original Complaint filed by Plaintiff in the state court action is attached hereto as part of **Exhibit A**.

2. On July 20, 2015, undersigned counsel informed Plaintiff's attorney that Plaintiff was never employed by Resolute FP, which Plaintiff improperly identified as a defendant in this matter. Plaintiff's counsel was advised that Plaintiff, instead, was employed by Fibrek Recycling U.S. Inc.

3. In response, on July 20, 2015, Plaintiff filed an Amended Complaint, which eliminated all references to Resolute FP (including in the caption) and identified Fibrek Recycling U.S. Inc. ("Defendant") as Plaintiff's employer and the sole defendant in this action. A true and correct copy of the Amended Complaint filed by Plaintiff is attached hereto as part of **Exhibit A**.

4. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b), in that Defendant has affected removal within thirty (30) days of receipt of a paper from which Defendant could first ascertain that this action is removable.

5. Defendant has not filed an answer or other pleading in the Circuit Court of Marion County, West Virginia.

VENUE

6. The Circuit Court of Marion County, West Virginia, in which Plaintiff's Amended Complaint was filed, is within this Court's District. Therefore, the action is properly removable to this Court pursuant to 28 U.S.C. § 1446(a).

REMOVAL IS PROPER BASED ON FEDERAL QUESTION JURISDICTION

7. This action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1331 because Plaintiff's civil action arises under federal statute. *See Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808 (U.S. 1986) (A "suit arises under the law that creates the cause of action.") (internal citations omitted).

8. Specifically, Plaintiff asserts a claim arising under the Americans with Disabilities Act (“ADA”), alleging that Defendant discriminated against him on the basis of a purported disability when Defendant allegedly denied a request for accommodation and terminated his employment. (Amended Complaint, ¶¶ 20-22).

9. Plaintiff also alleges that Defendant failed to notify him of his rights under the Family Medical Leave Act (“FMLA”), wrongfully denied him FMLA leave and improperly terminated him for absenteeism, purportedly in violation of the FMLA. (Amended Complaint, ¶¶ 14-16).

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

10. This Notice of Removal has been filed within thirty days after service of Plaintiff’s Complaint on Resolute FP on June 17, 2015 and within four days of Plaintiff’s transmission of the Amended Complaint to Defendant’s counsel on July 20, 2015. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

11. Copies of the Amended Complaint and all process, pleadings, orders and other papers or exhibits of every kind currently on file in the Circuit Court of Marion County, West Virginia are attached to this Notice of Removal as **Exhibit A**, as required by 28 U.S.C. § 1446(a).

12. Upon filing this Notice of Removal, Defendant will provide a written notification to Plaintiff and will file a Notice of Filing of Notice of Removal with the clerk of the Circuit Court of Marion County, West Virginia. As required by 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Filing of Notice of Removal is attached hereto as **Exhibit B**.

13. Defendant files this Notice without waiving any defenses to the claims asserted by Plaintiff, without conceding that Plaintiff has stated claims upon which relief can be granted and without conceding that Plaintiff is entitled to any damages against Defendant.

WHEREFORE, Defendant Fibrek Recycling U.S. Inc., respectfully requests that the United States District Court for the Northern District of West Virginia accept the removal of this action from the Circuit Court of Marion County, West Virginia and direct that the Circuit Court of Marion County, West Virginia Court have no further jurisdiction over this matter unless this case is remanded.

Dated: July 24, 2015

Respectfully submitted,

JACKSON LEWIS LLP

s/A. Patricia Diulus-Myers

A. Patricia Diulus-Myers, Esquire

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2015, a true and correct copy of the foregoing NOTICE OF REMOVAL was served upon the following by the United States Postal Service, first class, postage prepaid:

**Karl J. Kolenich
Klie Law Offices, PLLC
115 Island Avenue
Buckhannon, WV 26201**

s/A. Patricia Diulus-Myers
A. Patricia Diulus-Myers